



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
HENKEL-HARRIS COMPANY, INCORPORATED, THE  
FOR  
HENKEL-HARRIS COMPANY, INC.  
Registration No. 80004**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Henkel-Harris Company, Incorporated, The, regarding Henkel-Harris Company, Inc., The for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means Henkel-Harris Company, Incorporated, The, a furniture manufacturing facility located at 2983 South Pleasant Valley Road in Winchester, Virginia.
6. "Henkel-Harris" or "Henkel-Harris Company, Inc." means Henkel-Harris Company, Incorporated, The, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Henkel-Harris Company, Incorporated, The, is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "O&M" means operations and maintenance.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Permit" means a Stationary Source permit to operate a furniture manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Henkel-Harris Company, Incorporated, The, on January 7, 2009.
11. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).
17. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Henkel-Harris owns and operates a furniture manufacturing facility in Winchester, Virginia. The facility is subject to a Stationary Source Permit to Operate dated June 5,

2001, as amended January 7, 2009.

2. On September 21 and 22, 2010, DEQ staff conducted a Full Compliance Evaluation (FCE) of the facility. The following describe the staff's factual observations and identifies the applicable legal requirements:
  - a. There are seventeen spray booths and four DUX<sup>TM</sup> guns in operation at the facility. There are three specific spray booths listed in the Permit which use DUX<sup>TM</sup> guns for air pollution control. The facility constructed and operated a fourth DUX<sup>TM</sup> gun without first obtaining a permit from the board. In this regard, the parties would like to acknowledge that a DUX<sup>TM</sup> gun is installed rather than constructed. However, the word "constructed" is necessarily used with regards to DEQ permitting actions.
  - b. Records are either missing or incomplete for annual wood throughput to the wood-gas generator, its control efficiency, visible emissions and operating procedures.
  - c. Records are either missing or incomplete for annual wood throughput to the woodworking equipment, control efficiency, visible emissions and operating procedures.
  - d. The records required to be maintained which demonstrate compliance with both the emission data and operating requirements appear to be inaccurate or incomplete. Additionally, these records are not current for the past five years.
  - e. The records required to be maintained which demonstrate compliance with maintenance schedules, written operating procedures and operator training requirements appear to be inaccurate or incomplete. Additionally, these records are not current for the past five years.
3. 9 VAC5-80-1120(A) states that "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source." Additionally, Condition 1 of the Permit lists the following permitted equipment:

1. Equipment List – Equipment at this facility consists of the following:

Equipment to be Modified

Reference No.	Equipment Description	Rated Capacity
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Federal Requirements

2G, 4L, and BL1	Spray Booths	4.68 gallons/hr, each N/A
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Equipment permitted prior to the date of this permit

Reference No.	Equipment Description	Rated Capacity
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Federal Requirements

1B	Cleaver Brooks Boiler, model number CB 100-250 fired in conjunction with one (1) Biotherm wood-gas generator, model number GF 250	Boiler: 10.46 Million Btu/hr; Generator: 8 Million Btu/hr
AD, BD, CD, DD, and ED	Woodworking Equipment	5600 tons/yr
1ST, 2ST, WA, 1G, SE, 1L, 2L, 3L, BS1, BS2, BG, BL2, RTW, and RB	Spray Booths	Various spray capacities
		N/A

Equipment exempt from permitting

Reference No.	Equipment Description
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0E	Oven
SR	Storage Room
1L	Lacquer Storage Tank
2L	Lacquer Storage Tank
3LD	Lacquer Reducer Storage Tank
4S	Sealer Storage Tank
5G	Gasoline Storage Tank

Specifications included in the permit under this Condition are for informational purposes only and do not form enforceable terms or conditions of the permit.  
(9 VAC 5-80-850)

4. 9 VAC 5-80-1210 (D) states that, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
5. 9 VAC 5-50-50 (A) requires that any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board for the date of commencement of construction, initial startup, and actual date of startup for a new or modified source.
6. Condition 11 of the Permit states, "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with the fuel burning conditions of this permit. The content and format of such records shall be arranged with the Valley Regional Office. These records shall include, but are not limited to, the monthly and annual throughput of wood (in tons) to the wood-gas generator. Annual throughput shall be calculated monthly as the sum of each consecutive 12-month period. These records shall be available for inspection by the DEQ and shall be current for the most recent five years." (9 VAC 5-80-900 and 9 VAC 5-50-50)

7. Condition 17 of the Permit states, "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with woodworking conditions of this permit. The content and format of such records shall be arranged with the Valley Regional Office. These records shall include, but are not limited to the monthly and annual throughput of wood (in tons) to the woodworking equipment, calculated monthly as the sum of each consecutive 12-month period. These records shall be available for inspection by the DEQ and shall be current for the most recent five years." (9 VAC 5-80-900 and 9 VAC 5-50-50)
8. Condition 28 of the Permit states, "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Valley Region. These records shall include but are not limited to:
  - a. Monthly and annual throughput and emission of VOCs (in pounds) used in furniture finishing and gluing operations. Annual throughput and emissions shall be calculated as the sum of each consecutive 12-month period.
  - b. Monthly and annual throughput and emissions for each hazardous air pollutant (in pounds) listed under Condition 22. Annual throughput and emissions shall be calculated as the sum of each consecutive 12-month period.
  - c. Monthly and annual throughput and emissions of dimethyl phthalate (in pounds) used in furniture finishing and gluing operations. Annual throughput and emissions shall be calculated monthly as the sum of each consecutive 12-month period.
  - d. Monthly and annual throughput and emissions of methylene chloride (in pounds) used in finishing and gluing operations. Annual throughput and emissions shall be calculated as the sum of each consecutive 12-month period.
  - e. Monthly and annual throughput and emissions of particulates (in pounds) used in furniture finishing and gluing operations. Annual throughput and emissions shall be calculated as the sum of each consecutive 12-month period.
  - f. Monthly and annual throughput and emissions for each particulate compound (in pounds) listed under Conditions 24 and 25. Annual throughput and emissions shall be calculated as the sum of each consecutive 12-month period.
  - g. Monthly and annual emissions to verify compliance with the total hazardous air pollutant emission limitations in Condition 22. Annual emissions shall be calculated monthly as the sum of each consecutive 12-month period.

These records shall be available for inspection by the DEQ and shall be current for the most recent five years. (9 VAC 5-80-900 and 9 VAC 5-50-50)"

9. Condition 32 of the Permit states, "At all times, including periods of start-up, shutdown,

and malfunction, the permittee shall, to the extent practicable, maintain and operate the affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment and process equipment which affect such emissions:

- a. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance.
- b. Maintain an inventory of spare parts.
- c. Have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.
- d. Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures, prior to their first operation of such equipment. The permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training.

Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to DEQ personnel upon request. (9 VAC 5-50-20 E and 9 VAC 5-80-850)"

10. On October 15, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. AVRO7759 to Henkel-Harris for the violations described in paragraphs C.2 through C.9, above.
11. On October 25, 2010, a conference call was held between DEQ staff and Henkel-Harris. The Facility stated that they intended to hire a consultant to assist them with their records maintenance and that they believed they would be able to submit all records within two to three weeks.
12. On October 27, 2010, DEQ staff conducted a compliance assistance site visit to review compliance record-keeping and reporting requirements with facility staff and their consultant. Henkel-Harris staff stated that they believed they could gather enough data to provide DEQ with at least the past three months worth of wood usage.
13. On January 11, 2011, a conference call was held between DEQ and Henkel-Harris staff members. Henkel-Harris staff stated that they hired a new employee on January 10, 2011, to assist in the management and reporting of regulatory compliance activities.
14. On February 11, 2011, DEQ staff received a permit application from Henkel-Harris which included all applicable DUX<sup>TM</sup> guns and spray booths. No other compliance

documentation has been received.

15. Based on the findings of DEQ staff during the September 20-21, 2010 inspection, the Board concludes that Henkel-Harris violated 9 VAC5-80-1120(A), 9 VAC 5-80-1210 (D), 9 VAC 5-50-50 (A), and conditions 11, 17, 28 and 32 of their Permit as described in paragraphs C.2 through C.9 above.
16. In order for Henkel-Harris to return to compliance, DEQ staff and representatives of Henkel-Harris have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Henkel-Harris and Henkel-Harris agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,965.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Henkel-Harris shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Henkel-Harris for good cause shown by Henkel-Harris or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Henkel-Harris admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Henkel-Harris consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Henkel-Harris declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Henkel-Harris to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Henkel-Harris shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Henkel-Harris shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Henkel-Harris shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and



- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Henkel-Harris intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Henkel-Harris. Nevertheless, Henkel-Harris agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Henkel-Harris petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Henkel-Harris.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Henkel-Harris from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Henkel-Harris and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Henkel-Harris certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Henkel-Harris to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Henkel-Harris.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Henkel-Harris voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3<sup>rd</sup> day of June, 2011.



Amy Thatcher Owens, Regional Director  
Department of Environmental Quality

Henkel-Harris Company, Incorporated, The voluntarily agrees to the issuance of this Order.

Date: June 2, 2011 By: William F. Edmonson V.P. of Finance  
William F. Edmonson (Person) (Title) V.P. of Finance  
Henkel-Harris Company, Incorporated, The

Commonwealth of Virginia

City/County of Winchester

The foregoing document was signed and acknowledged before me this 2<sup>nd</sup> day of  
June, 2011, by William F. Edmonson who is  
V.P. Of Finance of Henkel-Harris Company, Incorporated, The, on behalf of  
the corporation.



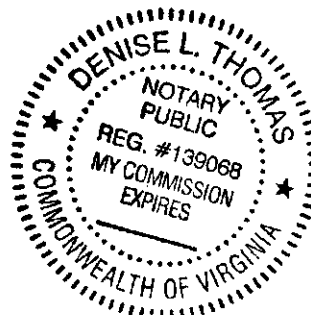
Notary Public

139068

Registration No.

My commission expires: 8-31-2011

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Permit Required to Construct or Operate**

Henkel-Harris shall not construct or operate a facility that requires a permit under 9 VAC 5-80-1120(A) without first obtaining such a permit. Within 90 days of the execution of this Order, Henkel-Harris shall supply sufficient information needed for the Department to evaluate the application and issue a permit if required.

### **2. Submittal of Required Reports**

Within 30 days of the execution of this Order, Henkel-Harris will submit copies of all required records and reports to comply with conditions 11, 17, 28 and 32 of their Permit or provide a written statement that all required records are complete, accurate and available for inspection at the Facility.

### **3. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, submitted to DEQ pursuant to this Consent Order, Henkel-Harris, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **4. DEQ Contact**

Unless otherwise specified in this Order, Henkel-Harris shall submit all requirements of Appendix A of this Order to:

**David Robinett, Enforcement Specialist**  
**VA DEQ –Valley Regional Office**  
**PO Box 3000**  
**Harrisonburg, VA 22801**  
**Office: 540-574-7862**  
**Fax: 540-574-7878**  
**Email: david.robinett@deq.virginia.gov**